

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**





74-1789

B

P/S

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

----- X

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

-against-

Docket No. 74-1789

JOSEPH SCLAFANI,

Defendant-Appellant.

----- X

*AND APPENDIX*  
BRIEF ON BEHALF OF APPELLANT

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CARAVAN BOND  
SAC-CONTENT

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

- - - - - X

UNITED STATES OF AMERICA,

Plaintiff-Appellee, Docket No. 74-1789

-against-

JOSEPH SCLAFANI,

Defendant-Appellant.

- - - - - X

BRIEF ON BEHALF OF APPELLANT

PRELIMINARY STATEMENT

The appellant, JOSEPH SCLAFANI, appeals from a judgment of the United States District Court for the Eastern District of New York, rendered on June 7, 1974, convicting appellant of one count of perjury in violation of 18 U.S.C. Section 1623, and sentencing him to three years imprisonment pursuant to 18 U.S.C. 4208(a)(2).

This case was tried to a jury on April 1st and 2nd, 1974, Chief Judge Mishler presiding.

A notice of appeal was filed by direction of the Court and bail conditions were continued pending the determination of this appeal. MARTIN LIGHT was assigned by order of this

Court on or about June 14, 1974,

STATUTE

Section 1623 False declarations before grand jury or court

(a) Whoever under oath in any proceeding before or ancillary to any court or grand jury of the United States knowingly makes any false material declaration or makes or uses any other information, including any book, paper, document, record, recording, or other material, knowing the same to contain any false material declaration, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.

(b) This section is applicable whether the conduct occurred within or without the United States.

(c) An indictment or information for violation of this section alleging that, in any proceedings before or ancillary to any court or grand jury of the United States, the defendant under oath has knowingly made two or more declarations, which are inconsistent to the degree that one of them is necessarily false, need specify which declaration is false if --

- (1) each declaration was material to the point in question, and
- (2) each declaration was made within the period of the statute of limitations for the offense charged under this section.

In any prosecution under this section, the falsity of a declaration set forth in the indictment or information shall be established sufficient for conviction by proof that the defendant while under oath made irreconcilably contradictory declarations material to the point in question in any proceeding before or ancillary to any court or grand jury. It shall be a defense to an indictment or information made pursuant to the first sentence of this subsection that the defendant at the time he made each declaration believed the declaration was true.

(d) Where, in the same continuous court or grand jury proceeding in which a declaration is made, the person making the declaration admits such declaration to be false, such admission shall bar prosecution under this section if, at the time the admission is made, the declaration has not substantially affected the proceeding, or it has not become manifest that such falsity had been or will be exposed.



(e) Proof beyond a reasonable doubt under this section is sufficient for conviction. It shall not be necessary that such proof be made by any particular number of witnesses or by documentary or other type of evidence.

#### FACTS

On April 11, 1974, the F.B.I. had staked out a three family house at 1564 Benson Avenue, Brooklyn, New York, looking for two State fugitives, PETER SALANARDI and NICK MUSSOLINO. The appellant, JOSEPH SCLAFANI, and there is no evidence to suggest that he knew either of the fugitives, was alleged to have been seen entering the building at 1:45 A.M. \* (A-18). He thereafter emerged at 10:40 A.M., emptied some garbage in a garbage can and drove away. He was driving an Oldsmobile Toronado that he had parked on the street when he arrived (A-19). None of the agents watching the premises was able to say whether he came out of a particular apartment, but they all pinpointed the area as that being in the vicinity of the front doorway.

Later in the evening of that day, the stake-out was still going on, when two men were seen coming over a fence somewhere in the block behind the house under observation. The men apparently were the fugitives being sought, and while one man escaped, NICK MUSSOLINO was apprehended. This occurred at 7:00 P.M., some eight hours after appellant left the area (A20-21, A39-31).

There was a brick wall between the fence and the row of

\*Numerical references prefaced with the letter "A" refer to to pages of the Appendix herein.

Numerical references not prefaced refer to Trial Minutes.

houses and there was not one shred of evidence to show, nor could one witness even say, that the two men had been in the apartment allegedly visited by SCLAFANI, or even that SCLAFANI knew either man ( A-25-28, A-22-23, A33-37 ). In addition, SCLAFANI was so unimportant, that when he left the building, no one thought to stop him or question him as to the whereabouts of the two fugitives or whether he had seen them ( A24-25 ). The agents had never seen SCLAFANI before ( A22 ) so that if the F.B.I. was desirous of raiding the premises they could easily have accosted appellant when he was leaving.

At any rate, no one got around to questioning appellant until nine days later, when he voluntarily appeared at F.B.I. headquarters with his attorney, and he essentially said that he had lived in the apartment with his wife, but when they separated, he sublet it to someone named LOUISE MATTEO or Di MATEO, whom he had just met. This happened about two months before April 11th, and he thereafter never was in the apartment except twice for a few minutes to collect the rent. On those occasions he only waited in the doorway and thereafter gave the money to the landlord. He did not know either SALANARDI or MUSSOLINO ( A32-38 ).

The fact that SCLAFANI moved out of the apartment and had apparently sublet it was later pretty much confirmed during the trial by the landlord, GIOVANNI RANDAZZO ( 174-176 ).



Four months went by and then appellant was summoned to appear before a Federal Grand Jury on August 8, 1973. Appellant told the jury essentially the same story he had related to the F.B.I. in April ( 43-56 ), and denied knowing the two men or being in LOUISE's apartment on any occasion for more than a few minutes ( A11-12,A13 ).

Appellant was recalled to the Grand Jury on September 26th, when he was asked the same questions in order to lay the groundwork for this perjury charge. In fact, the Grand Jury foreman testified that the September 26th Grand Jury had been made aware of the August 8th testimony, so that the Jury knew in advance what answers appellant was going to give ( A5-6 ).

SCLAFANI again testified the same way on September 26th as he previously had, except, during the course of the questioning he repeatedly said that he was not sure, could not recall or really did not remember, but the examiner kept pressing him for a yes or no answer, apparently to set up the perjury charge (A8-9,A10 ). Thus, after saying he was not in the building on April 11th, to the best of his knowledge ( A8 ), he later was asked the same question repeatedly until he said - no ( A16-17 ). Finally, the question is asked which formed the basis of the within charge:

"Q. Did you ever stay in that building for a period exceeding one hour after you sublet the apartment?

A. No." ( A17 )

Significantly, the question made no reference to specifics such as the time, date or apartment number.

During the cross-examination of one F.B.I. agent regarding his ability to tell that it was appellant he saw enter the building, the agent, CHARLES AVAKIAN, related that ht had later seen a picture of appellant amongst a series of photos and that the pictures were an integral part of his recollection. ( 80-81). Yet, the trial court, conducting its own voir dire, determined that the officer really was identifying appellant by his testimony in the courtroom rather than the viewing of the pictures contrary to the witness' own statement that the pictures really did form part of the identification basis ( 77A-79 80-81 ).

The Court also decided that the question that appellant allegedly answered falsely was material to the Grand Jury investigation, five months after the incident, as a matter of law ( A39 ) and the only matter really left for the jury was whether the statement was false and whether appellant made it, knowing it was false (A40-41 ). Materiality, was thus not charged ( A42-43 ).



POINT I

THE EVIDENCE BELOW WAS INSUFFICIENT  
TO SUPPORT THE CONVICTION. THE ALLEGED  
FALSEHOOD COULD NOT HAVE BEEN MATERIAL  
TO THE GRAND JURY'S INQUIRY.

Appellant recognizes that in this Circuit, as well as almost every other Circuit, materiality in a perjury case has been viewed as a question of law. United States v. Stone, 429 F.2d 138 (2nd Cir. 1970); Vitello v. United States, 425 F.2d 416 (9th Cir. 1970); United States v. Alo, 246 F.2d 29 (2nd Cir. 1957); United States v. Rivera, 448 F.2d 757 (7th Cir. 1971).

Yet, most of the positions of the different Circuits in this area can be traced back to Sinclair v. United States, 279 U.S. 263 (1929), where the rule received its main support in a holding which really was dicta but, regardless, dealt with a complicated question of the relevancy of certain highly technical evidence before a Senate Committee, and the whole subject of materiality was regarded as within the normal area of evidentiary relevancy and thus a question of law. One wonders whether if a criminal case were involved or if the forum was a Grand Jury room, the Supreme Court would not have rather let a petit jury decide the issue since here, the materiality question is the only real issue in the case, whereas in Sinclair, it was not very important.

One also wonders whether or not a recent Texas case really did not have the right idea, In Barnes v. United States, 378 F.2d 646, (certiorari denied 390 U.S. 972) (5th Cir. 1967). In that case, materiality was in fact submitted to the jury and although the Appellate Court said it should have been a matter for the Court in the first instance, the defendant was not prejudiced by the Court's action. It is hard to see the reason for having the Court decide what in most of these cases is the only real question to consider, yet on the other hand, afford a defendant the right to trial by jury.

In the case at bar, had the jury been given the issue, the result most certainly would have been different.

Appellant agrees with the position taken by the Government at the trial, that the question of materiality is to be determined at the time the testimony is given, rather than relating it back to the event it concerned. United States v. McFarland, 371 F.2d, 701,703 (2nd Cir. 1966) certiorari denied 387 U.S. 906 (1967).

Appellant cannot see how on September 26th, it was in any material whether he spent more than five minutes in an apartment on April 11th. There was not one iota of proof that SCLAFANI knew either of the fugitives or that they ever were in the apartment at any time A7, A22-23, A25-28, A33 ).



However, one fugitive was arrested in the evening of April 11th, but the other man got away. Five months later, SALANARDO, the escapee, was still being sought and the unimportance of appellant's testimony on September 26th is dramatically highlighted by the fact that supposedly the Grand Jury in calling appellant at that time was still looking for the fugitive, yet they did not ask appellant if he then knew where the man was or even if he knew him. The only thing asked was if appellant ever stayed in the building for more than an hour after he sublet the apartment (A17 ).

As trial counsel correctly pointed out, it is impossible to appreciate what that question had to do with the Grand Jury's inquiry in September, or even in August, when appellant first testified. In fact, once appellant supposedly left the building in the morning of April 11th, and no one in the F.B.I. thought of stopping him to investigate whether the two men were inside (A24-25 ), whether he ever spent an hour in that building was totally unimportant. That day, in the street, questioning SCLAFANI might have been important, but to ask him five months later if he ever was in the apartment without relating it to whether he knew where the fugitives were, is pure nonsense. If appellant had told the Grand Jury that he was in the apartment, it is hard to see what good it would have done.

Appellant showed he had nothing to hide and that he did not knowingly lie to the Grand Jury. He could have relied on his constitutional rights, yet he spoke to the F.B.I. voluntarily, nine days after the 11th of April ( A32-38 ), and came in to two Grand Jury sessions of his own accord, as well as one in Monticello, and answered all quesitons.

POINT II

THE PURPOSE FOR WHICH APPELLANT WAS  
CALLED BEFORE THE GRAND JURY ON  
SEPTEMBER 26th WAS NOT FOR LEGITIMATE  
INQUIRY BUT WAS MERELY TO ENTRAP HIM.

When appellant was recalled to the Grand Jury on September 26th, he had already been examined on August 8th and his August 8th testimony was made known to the Jury before appellant's second and fateful appearance ( A5 ). The foreman thus testified that when SCLAFANI testified, the Jury knew what the general questioning would be, and, from his August 8th testimony, they also expected what answers would be forthcoming (A5-6 ). In fact, it even becomes clearer that the only purpose of the September 26th appearance was to entrap appellant and lay the groundwork for the perjury indictment, when appellant kept giving "not to the best of my knowledge" or "I don't think so", "I doubt it very much" answers, he was repeatedly pressed for a "yes" or "no" answer, obviously so he could be in-



dicted ( A16-17 ). When he gave the desired "no" answer, the questioning ceased.

In Brown v. United States, 245, F.2d 549 ( 8th Cir. 1957) where a Nebraska Grand Jury brought a witness before it only to extract answers with a view toward a perjury indictment and without any idea of obtaining evidence from him to indict anyone else for a substantive crime, the Jury acted beyond its power and the answers of the defendant, even if false, would not support a perjury prosecution. The obvious similarity of purpose of bringing SCLAFANI before the Grand Jury in this case, coupled with the vagueness of the questions, makes it clear that the whole reason for calling appellant was to entrap him. Masina v. United States, 296 F.2d 871 ( 8th Cir. 1961)

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD BE REVERSED,

Respectfully submitted,

MARTIN LIGHT  
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66 Court Street  
Brooklyn, New York 11201

STANLEY M. MEYER  
Of Counsel

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CARAVAN BOND

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**ATTORNEYS**

**CLOSED**

**JOSEPH SCLAFANI**

*For Defendant:* MARTIN LIGHT  
66 Court Street  
Bklyn, New York  
834-8888

Did make false statements to Grand Jury etc.

DATE	PROCEEDINGS
1-16-74	Before JUDD, J - Indictment filed
/25/74	Before MISHLER, CH.J.- Case called- Deft and counsel present- Deft arraigned and enters a plea of not guilty -Bail set at \$5,000. P/R bond-April 1, 1974 for trial.
25/74	Notice of Appearance filed.
-29-74	Govt's Trial Brief and Govt's request to charge filed
4-1-74	Before MISHLER, CH J - case called - deft & counsel Martin Light present - trial ordered and begun - Jurors selected and sworn - Trial contd to 4-2-74 at 9:30 am.
4-2-74	Before MISHLER, CH J - case called - deft & counsel present- Trial continued - Govt rests - Motion by deft for dismissal is denied - deft rests - motion renewed by deft to dismiss the indictment is denied - at 2:00 PM the jury retired for deliberation.





UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

v.

JOSEPH SCLAFANI

DEFENDANT  
-----X

74 CR 29  
INDICTMENT

18 USC § 1623

1-16-74

MISHLER, J

THE GRAND JURY CHARGES:

1. On or about the 26th day of September, 1973, in the Eastern District of New York, the defendant Joseph Sclafani, having duly taken an oath before a competent tribunal, that is, the Grand Jury of the United States of America, duly impaneled and sworn in the United States District Court for the Eastern District of New York, and inquiring for that District in a case then and there pending before the said Grand Jury in which a law of the United States authorized an oath to be administered, that he would testify truly, did wilfully and knowingly and contrary to said oath, state material matter which he did not believe to be true, that is to say:

2. At the time and place aforesaid the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York, violations of Title 18, United States Code, Section 1073 (flight to avoid prosecution) and other criminal statutes of the United States.

3. It was material to the aforesaid investigation to determine whether the defendant Joseph Sclafani was in the building located at 1564 Benson Avenue, Brooklyn, New York, on April 11, 1973.

4. At the time and place alleged in paragraph 1 herein, the defendant Joseph Sclafani appeared as a witness before the aforesaid Grand Jury, and then and there, being under oath as aforesaid, testified falsely before the Grand Jury with respect to the aforesaid material matter as follows:

Q. Did you ever stay in that building for a period exceeding one hour after you sublet the apartment?

A. No.

5. The aforesaid testimony of the defendant Joseph Sclafani, as he then and there well knew and believed, was not true in that the defendant Joseph Sclafani, after he sublet the apartment, was in the building located at 1564 Benson Avenue, Brooklyn, New York, for a period exceeding one hour on April 11, 1973.

[Title 18, United States Code, Section 1623].

A TRUE BILL

---

FOREMAN

---

EDWARD J. BOYD V  
UNITED STATES ATTORNEY



1  
2 different names.

3 THE COURT: Next question, Mr. Light.

4 Q When for the first time were you told sir, that  
5 your Grand Jury was going to look into or hear evidence in  
6 relationship to these two gentlemen, Salanardi and Mussolino?

7 A The first time I personally heard of it was  
8 in late September; September 26th, if I recall.

9 Q September 26, 1973?

10 A If I recall the day correctly, yes sir.

11 Q How many people testified?

12 A During that day? I don't know the exact  
13 number of witnesses.

14 Q Was Mr. Sclafani the only one that testified ?

15 A No sir.

16 Q In reference to this investigation?

17 A No.

18 Q Were you told that Mr. Sclafani testified earlier  
19 in August?

20 A Yes.

21 Q Were you made aware of his prior testimony?

22 A Yes sir.

23 Q So, you knew specifically, just what questions  
24 were going to be asked of him September 26th, 1973?

25 A Not the specific questions but the general

1  
2 tenor.

3 Q And you generally knew his answers from his  
4 testimony in August, 1973?

5 A Yes sir.

6 Q And I think you told us on a question by  
7 Mr. Del Grosso that Mr. Sclafani was asked if he knew  
8 Mr. Salanardi and you told us he answered yes?

9 A That's my recollection, yes.

10 Q Did you have an opportunity sir before testifying  
11 to look over the Grand Jury Minutes?

12 A No sir.

13 Q Did anyone tell you sir, that on September 26th,  
14 1973, that if Mr. Sclafani is coming into the Grand Jury in  
15 a few minutes and if he will testify that on April 11th, 1973 --  
16 some five, six months earlier -- that if Mr. Sclafani would  
17 say "Yes, I was in the apartment on April 11, 1973" -- did  
18 anyone tell you that would help your investigation?

19 A We were looking for the whereabouts of  
20 Mr. Salanardi and nobody told us what would help or what  
21 would not help.

22 However, anyone who would know whether  
23 Mr. Salanardi had been in that apartment or not would be  
24 helpful to the investigation, in my mind.

25 Q September 26, 1973 you were concerned about the



Kahn - cross

37

A Yes, sir.

Q You told us earlier that you believed that Mr. Sclafani testified that he knew Peter Salanardi.

Will you please refresh your recollection, sir, with those Grand Jury minutes, and tell us if you were correct or incorrect.

(Pause)

A There is nothing in the minutes that say he knew Peter Salanardi.

Q Would that indicate, sir, that that question on September 26, 1973, was never asked of him?

A From the minutes, it would appear, yes.

THE COURT: I understand the lawyers have stipulated that this transcript, marked Defendant's Exhibit A is a correct and accurate transcript of the testimony of the defendant before the Grand Jury, September 26, 1973.

MR. LIGHT: The defendant so stipulates.

MR. DEL GROSSO: Yes, your Honor.

THE COURT: All right.

Q In fact, Mr. Kahn, would you please look at those Grand Jury minutes and tell us if there are any questions in those Grand Jury minutes, on September 26, 1973, asking the defendant Sclafani whether he knew either of those two people —

3

Kahn - cross

38

whether he ever saw them.

MR. DEL GROSSO: I object to this, your Honor.

THE COURT: Please read the question.

(Record read by Reporter.)

THE COURT: Objection sustained.

The Grand Jury minutes are before the jury, and they can make that determination themselves.

Q Mr. Kahn, do you recall earlier I asked you whether you recalled hearing a question by Mr. Del Grosso, and an answer by Mr. Sciafani? I referred you to page 4:

"Question: Specifically, were you in that building on April 11, 1973?

"Answer: That building?

"Question: Right.

"Answer: Not to the best of my knowledge."

Does this refresh your recollection if that question was asked, and that was the reply?

A Yes, sir.

Q "Question: Did you go into that building at approximately 1:30 A.M. on April 11, 1973?

"Answer: I don't think so. I doubt it very much."

Q Refresh your recollection, sir?

A Yes.



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4

Kahn - cross

39

Q And the next question:

"Question: Did you leave the building at approximately 10:48 A.M., and prior to your leaving the building, did you empty the garbage?"

THE COURT: Objection sustained.

If you are reading the witness to read the Grand Jury minutes, objection sustained. If you want to read it, you may.

MR. LIGHT: That's not what I'm asking.

THE COURT: Objection sustained.

You are asking this witness to do nothing more than to repeat the answers he finds in the Grand Jury minutes.

MR. LIGHT: I'm asking him to correct his testimony.

THE COURT: Are you answering from your recollection, or just reading the transcript?

THE WITNESS: At the moment, I'm reading the transcript, your Honor.

THE COURT: All right.

I won't allow a witness to be used simply to read a document. You may read any document to the jury.

Q Do you recall on direct testimony you stated on a question from Mr. Del Grosso that you were trying to find

5

Kahn - cross

40

the whereabouts of Peter Salanardi, indicted in a State proceeding, and that he was allegedly living in an apartment of his girl friend?

A Yes, sir.

Q What is his girl friend's name?

A Louise.

Q Louise what?

A I don't know the last name.

Q During the course of this investigation, Mr. Kahn, did you hear testimony from witnesses that Mr. Salanardi's name was Louise?

MR. DEL CROSSO: Objection.

THE COURT: The jury may be excused.

(Jury excused at 12:50 P.M.)

THE COURT: Tell me the purpose of this question, Mr. Light.

MR. LIGHT: On direct testimony he stated that Louise -- He didn't state the name -- but he stated that Peter Salanardi's girl friend was Louise.

There is going to be testimony that Mrs. Sclafani sublet the apartment to a girl named Louise, so I want to see if the Grand Jury had knowledge or testimony that this Louise was the same person, or it was suggestive thinking on behalf of Mr. Del Crosso in the course



1 "Question: Now, again, where is that building  
2 located?

3 "Answer: 1564 Benson Avenue.

4 "Question: You had never been back to 1564  
5 Benson, into the building, into your apartment or any  
6 part of that building?

7 "Answer: No.

8 "Question: Except for two times when you went  
9 to your former apartment, which is the walk-in apartment?

10 "Answer: Right.

11 "Question: And you got rent from this person?

12 "Answer: Yes.

13 "Question: This girl -- And her name was, what?

14 "Answer: Louise.

15 "Question: Can you describe her?

16 "Answer: Yes.

17 "Question: Please do.

18 "Answer: Dirty blonde hair, nice build, light  
19 eyes, pretty.

20 "Question: About how tall?

21 "Answer: My size or bigger, can't tell with the  
22 heels today.

23 "Question: So, what was that -- 5',5"?

24 "Answer: 5',4".

25 "Question: How much did she weigh? Could you

1 approximate that?

2 "Answer: I don't know.

3 "Question: 115, 120? Did she have long hair  
4 or short hair?

5 "Answer: Long hair.

6 "Question: Is she an Italian girl -- Italian-  
7 American?

8 "Answer: Yes. I would say that.

9 "Question. She was. She had dirty blonde hair?

10 "Answer: Yes."

11 On page 16:

12 "Question: How did you get back and forth to  
13 work?

14 "Answer: I have a car.

15 "Question: What kind of car is that?

16 "Answer: '63 Oldsmobile.

17 "Question: '68 Oldsmobile?

18 "Answer: Yes."

19 Page 17:

20 "Question: What make?

21 "Answer: Toronado.

22 "Question: What color is the car?

23 "Answer: Black.

24 "Question: What is it; two-door, four-door?

25 "Answer: Two-door.



1 "Question: Is it your car, sir?

2 "Answer: Yes.

3 "Question: Or is it your wife's car?

4 "Answer: My car.

5 "Question: In your name?

6 "Answer: Right.

7 "Question: How long have you had the car?

8 "Answer: Five months.

9 "Question: So you had the time at the time you  
10 were living at 1564 Benson?

11 "Answer: I don't remember. I think I did.

12 "Question: Did you have the car when you rented  
13 the apartment, your former apartment, to Louise?

14 "Answer: I don't think so. No, I don't think I  
15 did have the car. I think I got the car when I was liv-  
16 ing with my mother. I don't think I had the car when I  
17 was living --

18 "Question: Wait a minute. This is August 3, so  
19 one month back would be July. Two months back would be  
20 June. Three months back would be May. And four months  
21 back would be April. So, you said, you say five months?

22 "Answer: I can show you the registration.

23 "Question: All right. Look at your registra-  
24 tion, and see how long ago.

25 "Answer: March 14.

1 "Question: March 14, 1973, is when you purchased  
2 the car?

3 "Answer: That is what it is."

4 Still on page 18:

5 "Question: Now, is it possible that you rented  
6 this apartment out in February and in March?

7 "Answer: I couldn't -- I doubt it, but it could  
8 be possible.

9 "Question: Was it April? Is it closer to April  
10 that you had rented that apartment out? Is there any-  
11 thing that you can pinpoint the date?

12 "Answer: I have a receipt, one of the rent  
13 receipts. I'm missing two.

14 "Question; But the last one is what?

15 "Answer: Well, I will tell you in a minute.  
16 April.

17 "Question: Let me see. This is the last rent  
18 receipt that you paid?

19 "Answer: No.

20 "Question: You paid this one?

21 "Answer: Well, the girl gave me the money.

22 "Question: The girl, Louise, gave you the money,  
23 and you paid it the exact same day?

24 "Answer: Yes.

25 "Question: But you are sure that this is the last



1 one? April 1, 1973, that's the last time you paid for  
2 the apartment?

3 "Answer: Yes.

4 "Question: And that was the last month that the  
5 girl by the name of Louise had it?

6 "Answer: That's the last money she gave me for  
7 the rent."

8 Page 22:

9 "Question: Do you know an individual by the  
10 name of Peter Salanardi?

11 "Answer: No.

12 "Question: Do you know Nicholas Mussalino?

13 "Answer: No, sir.

14 "Question: Was Nicholas Mussalino arrested  
15 near your apartment, former apartment, in April of 1973?

16 "Answer: Not as far as I know.

17 "Question: Were you ever asked that question  
18 before?

19 "Answer: Yes.

20 "Question: By who?

21 "Answer: By the Grand Jury in Monticello.

22 Page 23:

23 "Question: Did Mr. Mussalino ever use your apart-  
24 ment?

25 "Answer: Not that I know of.

1 were in that apartment after April 1st, 1973. Were  
2 you in that apartment after April 1, 1973?

3 "A No.

4 "Q You were never in that apartment?

5 "A No.

6 "Q The building is located where?

7 "A Third house off the corner on Benson Avenue.

8 "Q What is the address?

9 "A 1564.

10 "Q Specifically, were you in that building on  
11 April 11, 1973?

12 "A That building?

13 "Q Right.

14 "A Not to the best of my knowledge.

15 "Q Did you go into that building at  
16 approximately 1:30 A.M. on April 11, 1973?

17 "A I don't think so. I doubt it very much.

18 "Q Did you leave the building at approximately  
19 10:48 A.M. and prior to your leaving the building,  
20 did you empty the garbage?

21 "A If I wasn't in the building, how could I?

22 "Q I'm asking you yes or no.

23 "A To the best of my knowledge, no. I don't  
24 think I was even there. I could have been in the area  
25 because my mother-in-law lives across the street.



1 "Q But you were never in that building on  
2 April 11, 1973?

3 "A No, not to the best of my knowledge.

4 "Q April 11, 1973, is that the date Nicholas  
5 Mussolino was arrested?

6 "A April what?

7 "Q 11th, 1973. Do you remember that date?

8 "A No, I don't.

9 "Q Were you in that apartment, did you go to  
10 the apartment, to the building itself? Did you go to  
11 the building of 1564 Benson Avenue after you sublet  
12 the apartment?

13 "A (Witness nods head.) Well, I went to  
14 the building to pay the rent.

15 "Q But you were never in the apartment?

16 "A Not in the apartment. To the door.

17 "Q Did you ever stay in that building for  
18 a period exceeding one hour after you sublet the  
19 apartment?

20 "A No."

21 MR. DEL GROSSO: Nothing further.

22 THE COURT: You may read anything else from  
23 the exhibits that you wish or you may reserve for  
24 a time when your case is on, Mr. Light.

25 MR. LIGHT: I will reserve.

Avakian-direct

those two individuals?

A Yes sir, there was.

Q Where were you located sir?

A I was across the street from I think it was  
15-64 Benson.

Q 1564 Benson and what are the other streets in  
that area?

A The closest street to that would be 16th Avenue  
on the corner.

Q There is also Bay 11th?

A Yes.

Q Now what time were you on duty sir?

A At that particular location, sir, I was on  
duty from 1 to 3 in the morning.

Q At that time did you see anyone in this court-  
room at that location?

A Yes sir.

Q Who was that?

A I saw the defendant, seated over there  
(indicating), at approximately 1:45 in the morning, drive  
up in a black Coronado; black Olds Coronado.

THE COURT: Let the record show the witness  
pointed out the defendant, Joseph Sclafani.

Q What happened sir?



16

Askeland-direct

A Yes, I was.

Q Did you see anyone enter 1564 Benson Avenue?

A No one entered.

Q Did you see anyone exit?

A Yes, sir.

Q Who was that, sir? Is it the individual in the  
courtroom?

A YES.

Q Point him out for the jury, please.

A Right here. (Indicating)

THE COURT: The witness points out the  
defendant, Joseph Sc lafani.

BY MR. DEL GROSSO:

Q Where did you see him exit?

A The door, the lower apartment. I saw him come  
out and empty some garbage in garbage cans and enter a  
1968 or 1969 black Olds Toronado.

THE COURT: What time of day was this?

THE WITNESS: This was at 10:48 a.m.

THE COURT: What kind of day was that?

THE WITNESS: As I remember, it was a very  
clear day, nice day. It was a very cold day, as I  
remember it.

Q I show you this photograph marked as

18

Askeland-direct

1  
2 A I could just see the garbage cans out the side  
3 vents of the truck, located approximately where they are  
4 located now.

5 Q After he emptied the garbage, what did he do?

6 A He then proceeded down the street, and there  
7 was a car, his car or the car in question, the black Olds  
8 Toronado, which was parked a little bit ahead of this one,  
9 I believe.

10 Q He left the area?

11 A He went to the end of the street where there  
12 was a white Cadilla c that was also stopped.

13 One of the individuals got out of this white  
14 Cadilla c and got into the said Toronado.

15 Q Now, who did you -- I presume you relieved an  
16 individual, a fellow agent when you came on duty?

17 A Yes, I relieved Special Agent Anderson.

18 Q You left at what time?

19 A I left at 11 a.m. that same morning. I was  
20 in there for three hours.

21 Q Was there an arrest made that same, day, sir?

22 A Yes.

23 Q Of whom?

24 A Nicholas Mussolino.

25 Q Approximately what time, do you know?



19 Askeland-direct

A I really couldn't say. I believe it was  
after 7 p.m. that night. I wasn't present.

MR. DEL GROSSO: No further questions, your  
Honor

THE COURT: Mr. Light?

CROSS-EXAMINATION

BY MR. LIGHT:

Q Agent Askeland, you pointed to the photograph  
a moment ago. Could you show us where the defendant's  
black Toronado was parked?

A Well, it was parked -- it's hard to tell from  
this photograph because it's an angle, but I was parked  
here (indicating.)

THE COURT: You mean to the right?

THE WITNESS: I could point it out better on  
the board.

THE COURT: Do it on the photograph first.

THE WITNESS: I would say that the Toronado  
was about here, back over here (indicating)

THE COURT: Would you superimpose an oblong  
on the car that is parked and show where the Toronado  
would be?

THE WITNESS: It was headed the same way,  
approximately here. (Indicating)

5 Askland - cross

A He crossed both driveways, out into the street,  
walked past the rear end of his car, opened his door, got in  
and drove away.

Q Was that the first time that you ever saw Joseph  
Sclafani?

A Yes, it was.

Q When was the next time that you ever saw Joseph  
Sclafani in person?

A The next time -- I can't remember the date, but  
I did see him one other time in Brooklyn.

Q And then again today?

A Again today. I don't believe I saw him -- I  
can't remember if I saw him --

THE COURT: Just answer the question.

The first time you saw him was about the morning  
of April 12?

THE WITNESS: April 11.

THE COURT: April 11 -- and then you saw him  
once after that, and today?

THE WITNESS: Yes.

Q Did you ever see those two fugitives you were  
looking for, Mussalino or Salanardi?

A No.

Q In that apartment?



1 6 Askland - cross

2 A No.

3 Q Ever see them leave that apartment?

4 A No, I didn't.

5 Q You never saw Mussalino come out of that apart-  
6 ment; correct?

7 A No, I didn't.

8 Q I'll ask you this question --

9 MR. LIGHT: Withdrawn.

10 Q Do you recall testifying, Agent Askland, at the  
11 Grand Jury on August 22, 1973?

12 A Yes, sir.

13 Q Did you have an opportunity to see your Grand  
14 Jury minutes before your testimony?

15 A No, I haven't.

16 Q You have never seen it?

17 A No, I haven't.

18 Q Reading from page 4, were you asked this question,  
19 and did you give this answer:

20 "Question: Did you observe anyone?

21 "Answer: Well, I observed several people on the  
22 block, but the only one of interest came out of that residence,  
23 and at that time, it was just a white male, and this description  
24 that came out of that residence later on that evening -- Later  
25 on that evening Mussalino was arrested, he came out of that

Rafferty-cross

IG:bd  
R 11

1  
2 Q You didn't anticipate that car would come around  
3 the corner or anything?

4 A No. We had reason to believe that our fugitives  
5 were at that location and we would have stopped them then and  
6 there.

7 Q Did you have an arrest warrant for those two  
8 people?

9 A Yes.

10 Q Did you ever attempt to go inside and arrest  
11 them?

12 A No.

13 Q Did anyone stop Sclafoni when he came out and  
14 question him?

15 A No.

16 Q Did anyone say, "Is Mussolino and Salanardi in  
17 that apartment"?

18 A No.

19 Q No one stopped him or questioned him?

20 A No.

21 Q Isn't it true, sir, that the first time any  
22 agents questioned Mr. Sclafoni was possibly a week or two  
23 later when he was asked to come up to the FBI office with his  
24 attorney?

25 A Because we couldn't find Mr. Sclafoni.



Rafferty-cross

150

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Q When did you look for him?

A We -- not "we" -- not "me" --

Q Don't tell us what anyone else did.

Did you ever look for him?

A No, I don't believe I did.

Q Did anyone ever see any of those two fugitives  
leave this apartment at 1564 Benson Avenue?

A As far as what other agents saw?

Q Yes.

A I can't really answer that.

Q You are the case agent?

A I am now. I wasn't then.

Q If any agent saw those two fugitives leave or  
enter wouldn't you know about it?

A Well, the two fugitives --

Q That's not the question.

If they were ever seen leaving or entering the  
apartment would you know about it?

A One of the two fugitives was arrested coming  
out of the back yard.

Q You told us there were a few wire fences.

A Yes.

Q And there are how many houses between 1564 and  
15th Avenue?

1           A       It's one house, in effect -- one building.

2           Q       Sir, are you telling me that all those houses  
3 are one?

4           A       Well, I'm not -- I don't know what you call  
5 them -- condominiums. I don't understand how New Yorkers  
6 describe a house. To me a house is one building.

7           Q       Where is 1564 in that photograph?

8           A       Just off center.

9           THE COURT: Put an arrow and put "1564 Benson."  
10           (Witness complied.)

11          THE COURT: You have circled it in green.

12          THE WITNESS: The lighter colored brick.

13          Q       You see one entrance to that building from the  
14 stairs going up -- now the walk-in -- you see one flight of  
15 stairs, one entering into that building?

16          MR. DEL GROSSO: Objection. Let the witness  
17 answer.

18          THE COURT: I will allow it.

19          A       I see one entrance at the top of the stairs.

20          Q       And do you see, looking to your left, another  
21 flight of stairs apparently going into another building?

22          A       Yes.

23          Q       And another flight of stairs to the left going  
24 into the same building?

25          A       They are all going into the same building.



1  
2 I don't know what you call them.

3 THE COURT: They are all attached houses,  
4 separately occupied. Each entrance is a different  
5 house.

6 THE WITNESS: Yes.

7 THE COURT: And you originally thought that  
8 the entire row of houses was one building?

9 THE WITNESS: I'm still not sure that they are  
10 not. There are individual families in the three  
11 squashed together.

12 THE COURT: Are there individual fences in the  
13 back that would be correlated to the front steps up?

14 THE WITNESS: Yes. The two wire fences break  
15 into three lots.

16 THE COURT: That's what Mr. Light is talking  
17 about.

18 Q In other words, the property line in the back  
19 would be separated by those wire fences?

20 A I assume so.

21 Q And then there comes a time -- you said there  
22 was one wire fence and another --

23 A And then the white fence.

24 Q The white wooden fence?

25 A Yes.

1  
2 Q And then you told us something that at 7:15  
3 evening this fellow Mussolini was arrested?  
4 A Yes.  
5 Q Did you see what building or what door he came  
6 out of?  
7 A No, I did not.  
8 Q Did any agent see what door he came out of?  
9 A Beyond coming out of the white fence --  
10 Q Do you understand the question?  
11 A I can't say.  
12 Q You know what a door is and a fence?  
13 A Yes.  
14 Q We are talking about a door.  
15 To your knowledge, did any agent, to your  
16 knowledge, see any of those fugitives come out of a door?  
17 A To the best of my knowledge, no.  
18 Q The only thing seen was in the vicinity of the  
19 white fence on 16th Avenue?  
20 A Correct.  
21 Q And 1564 is about how many feet in from 16th  
22 Avenue? Do you have any idea?  
23 A As I said before I'm not very good at yardage.  
24 THE COURT: Point out the distance with  
25 reference to where you're sitting, with reference to



2 Q Does this photograph accurately reflect the area  
3 as it was April 11, 1973?

4 A Yes. I would consider this a fair and  
5 accurate representation of the area as it existed at that  
6 time.

7 Q Was this white picket fence there at that time?

8 A Yes.

9 MR. DEL GROSSO: I offer it.

10 MR. LIGHT: No objection.

11 THE CLERK: Government's Exhibit 10 previously  
12 marked for Identification now received in evidence.

13 (So marked.)

14 Q At approximately 7:15 p.m. on April 11, 1973,  
15 did you have occasion to make an arrest, sir?

16 A The more accurate time, I would say, to the  
17 best of my recollection, is 7:30 as opposed to 7:15, but in  
18 that vicinity.

19 Q You made an arrest?

20 A Yes.

21 Q Of whom?

22 A Nicholas Mussolino.

23 Q Explain to the jury the circumstances, please.

24 A As indicated by the photograph, there is a white  
25 picket fence and then just approximately four feet in front

2 Fitzgerald-direct

of the fence is a concrete brick wall approximately two feet high.

At 7:30 we observed two individuals, you might say, vaulting this lower wall. They didn't come out this gate but over here, closer to the phone pole.

Q So you mark on there where they came out.

THE COURT: With an X, please, in green crayon.

THE WITNESS: Yes.

(Witness complies.)

Q Could you mark where your car was located, sir.

THE COURT: With a brown pencil; oblong shape.

THE WITNESS: Directly opposite the green "X".

THE COURT: Did you mark it in an oblong shape?

THE WITNESS: I didn't.

(Witness complies.)

THE COURT: Put your initials in the oblong so we'll know you made it.

(Witness complies.)

Q Special Agent Fitzgerald, did you capture any of the individuals?

A Yes.

Q Who?

A Nicholas Mussolino.

Q You arrested him, sir?



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A Yes.

Q Was the other individual captured?

A No.

Q Was he identified?

A Yes.

Q Did you identify him, sir?

A Yes.

Q Who was that?

A Peter Salanardi.

Q How did you identify him, sir?

A Based on the photograph which I thought was quite similar to the individual we observed. There was no doubt in my mind that was the same person.

Q That yard is behind Benson Avenue?

A That yard is behind Benson Avenue; correct. That would be the rear of the building that we were observing.

Q How was the visibility at that time?

A The visibility I would consider excellent for that time of night because directly adjacent to that white picket fence was a telephone pole with a number of street lights.

Q You had no difficulty in viewing that area?

A No.

Q No difficulty in viewing the suspect?

2 Werlein-direct

1  
2 Q -- do you know the defendant?

3 A Yes.

4 Q Joseph Sclafani?

5 A Yes.

6 Q Were you involved in an investigation of  
7 Mr. Sclafani?

8 A I was.

9 Q At any time did you question Mr. Sclafani?

10 A Yes.

11 Q When was this sir?

12 A It was on April 16 of 1973.

13 Q Where did this questioning take place?

14 A It took place in the FBI office here in New  
15 York on East 69th Street.

16 Q Who was present?

17 A Joseph Sclafani was present, his attorney was  
18 present, Martin Light; I was present, Special Agent Kevin  
19 O'Brien, and oh, I think John McGinley was in for part of  
20 the time.

21 Q When you say "Mr. Light," is that the same  
22 Mr. Light at the table?

23 A That's right.

24 Q Was this an investigation of Mr. Sclafani or  
25 an investigation of other individuals?



3

Werlein- direct

A This was in connection with an investigation of other individuals.

Q Who were those individuals, sir?

A Peter Salanardi and Nicholas Mussolino.

Q This was a federal investigation of what?

A Unlawful flight to avoid prosecution case.

Q You did question Mr. Sclafani. What did you ask him?

A Well, we were concerned as regarding his apartment in Brooklyn and whether or not he had knowledge of the fact that these individuals were staying in his apartment.

Q You mean Salanardi and Mussolino?

A Yes.

Q What did Mr. Sclafani say?

A He stated that he did not know Salarnardi and Mussolino and that he did not know that they had ever stayed in the apartment.

Q His apartment?

A Yes.

Q Where was the apartment located?

A 1654 Benson Avenue.

Q Is that an apartment house or what?

A I don't know what you call it. It's more of

4 Werlein-direct

a connection of apartments in a one structure building.  
Mr. Sclafani's apartment was the bottom, lower level  
apartment.

Q When you asked him whether or not he knew  
Peter Salanardi and Nicholas Mussolino, did you show him  
pictures?

A Yes.

Q He could not identify them?

A He could not identify them.

Q Were there any other questions you asked?

A Yes sir. We asked if he had been living  
in that apartment recently and he replied he had not been.  
He said he had been living with his parents on 86th  
Street for the past month and a half or two months prior  
to the inquiry.

Q And the inquiry was April 16, 1973?

A Correct.

Q So, he moved out of his apartment approxi-  
mately a month and a half prior to that interview?

A Correct.

Q Did he say who had the apartment?

A He said that he had rented this apartment out  
to a girl whom he had met in Brooklyn, by the name of  
Louise.



5 Werlein-direct

Q Did he know her last name?

A He said he didn't know the exact last name. He said it sounded like Mateo or DeMateo, something like that.

Q Did he state whether or not this Louise was a relative?

A He didn't state but I assume that she was not since he met her at this bar in Brooklyn for the first time.

Q Did he state whether or not Louise was living there alone?

A I don't think he mentioned that but I assumed from his conversation that he only rented the apartment to her --

THE COURT: Read that back, please.

(Record read.)

THE COURT: Strike out "I assume" and the jury will disregard it.

Q Did you ask Mr. Sclafani if he had been back to his apartment since he sub-let it?

A Yes sir.

Q What was his answer?

A He said that he had gone back there on April 3rd or April 4th to collect rent from this Louise.

6 Werlein-direct

Q Did he go into the apartment?

A He stated that he went up to the door,  
collected the rent but he did not go in.

Q What did he do then?

A He left.

Q Did he himself pay the rent to the landlord?

A You mean that rent he collected from Louise?

Q Yes.

A We did not ask him that question.

MR. DEL GROSSO: Nothing further.

May I have this marked? Mr. Light already  
has it.

THE CLERK: Four page document marked  
government's exhibit 17 for identification.

(So marked.)

THE COURT: Mr. Light?

CROSS-EXAMINATION

BY MR. LIGHT:

Q Mr. Werlein, did you just tell us --

MR. LIGHT: Withdrawn.

Q -- At the time that you were questioning Mr.  
Sclafani, were you taking notes?

A Yes sir.

Q Did you have an opportunity to read your notes



7 Werlein- cross

prior to testifying?

A Yes sir.

Q And you just told us, is it not so, that the defendant told you or he did not say that he paid the rent?

A Repeat the question?

Q Did you just state to Mr. Del Grosso, sir, on a question asked you "What did Mr. Sclafani do after he collected the rent, did he pay it to the landlord" I think your answer was "He didn't say what he did with it." Is that not so?

A To my best recollection whether he turned over that particular rent to the landlord, I can't remember.

Q I show you government's exhibit number 17 sir. Is that a typewritten transcript of your notes taken April 16, 1973?

A It is.

Q I draw your attention to the last part of the paragraph?

A Umm hmmm.

Q Does that refresh your recollection?

A Yes sir.

Q Do you want to correct your answer that the defendant did in fact tell you that when he collected the

8 Werlein- cross

1 money from Louise he in turn paid it to his landlord,  
2  
3 Randazzo?

4 A Correct.

5 Q You told us a little while ago -- at that  
6 time, he wasn't a defendant, when you spoke to Mr. Sclafani?

7 A No.

8 Q He came in voluntarily with his attorney?

9 A Correct.

10 Q At that time did you show him pictures?

11 A Yes.

12 Q And he told you that he never saw those two  
13 fellows, Mussolino and Salanardi, and he told you he doesn't  
14 know them?

15 A Correct.

16 Q Sir, did you ever have any investigation re-  
17 ports from the FBI or did any brother agent ever tell you  
18 that anyone saw Mr. Sclafani with those two fugitives?

19 A Mrs.?

20 Q Mr. Sclafani -- with those two people?

21 A From our surveillance -- no, not "with";  
22 that's right.

23 Q You also told us, sir, a few moments ago on  
24 a question from Mr. Del Grosso that Mr. Sclafani told you  
25 that he met Louise in a bar?



1 lie. The alternative was not to commit perjury.

2 Now, the most confusing part of the determination  
3 of the Court that the statement was material, is  
4 that the charge offered by the Government would  
5 submit materiality to the jury as an element of the  
6 crime.

7 An oath and a proceeding before -- I won't  
8 say ancillary to the Court -- it was an oath in a  
9 proceeding before the Grand Jury -- to a material  
10 false declaration, knowingly made.

11 Do you agree materiality is a matter for the  
12 Court?

13 MR. LIGHT: It's what the law is, not what  
14 I say.

15 THE COURT: There's Bronston and U.S. v.  
16 Pollack. I have gone through the cases and that's  
17 what it clearly says.

18 Mr. Del Grosso, you quote Judge Judd in  
19 United States against Pinto where he says the same  
20 thing, and I spoke with Judge Judd and I have the  
21 source of the charge for the proper situation --  
22 that it need not be in the essential elements once  
23 you decide it's a matter for the Court. Maybe you  
24 put that in your brief.

25 Is there any question about the cases? I can

1 THE COURT: What page?

2 MR. LIGHT: Page 11.

3 THE COURT: Yes.

4 MR. LIGHT: I would go along with the  
5 Government's requests to charge and ask your Honor  
6 to state that as to the third element, intent, the  
7 statute, you will recall, defines it as a knowingly  
8 made false statement and that they have to determine  
9 that not only was the statement made and it was  
10 material and under oath, but that it was false when  
11 made.

12 THE COURT: I say, that seems inconsistent  
13 with the law, and I spoke to Judge Judd and he  
14 advised me that he gave it to the jury, but it was  
15 not a fact question for the jury.

16 The other judges of this court indicate that  
17 what they do is charge that the essential elements  
18 of the crime are finding it was a material false  
19 statement, but they say to the jury, "That's with-  
20 drawn from your consideration. The Court already  
21 found that the statement was material to the matter  
22 pending before the jury."

23 I'll state it that way.

24 MR. LIGHT: It's a sure conviction that way.

25 THE COURT: Well, I thought that would be a



2 1  
2 the law, so you are the sole judge of the facts.  
3 You will find, as I charge you later, that you  
4 will determine what actually happened on April  
5 11, 1973. You will determine, among other  
6 issues, whether this defendant was in the ground  
7 floor or street floor apartment of 1564 Benson  
8 Avenue on April 11 and you and you alone will  
9 determine whether the statement or answer he  
10 gave to the question "Did you ever stay in that  
11 building for a period exceeding one hour after  
12 you sub-let the apartment" was false and if,  
13 when the defendant made that statement to the  
14 Grand Jury on September 26, 1973, he was aware  
15 that it was false and knowing that it was false,  
16 nevertheless, answered it with a "No."

17 I have no opinion as to the outcome of  
18 this case or what the verdict should be. I  
19 leave that solely in your hands. I am interested,  
20 vitally interested in seeing that both sides get  
21 a fair trial; that you understand the obligations  
22 of the Government and the rights of the defendant  
23 in the trial; that you be fair in the treatment  
24 of the litigants in this litigation.

25 In every criminal trial the defendant is

18

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3 The next question is, did the defendant  
4 answer "No" to the question, "Did you ever stay  
5 in that building for a period exceeding one hour  
6 after you sub-let the apartment" and the subsidiary  
7 question to that is, was that false? In making  
8 the determination as to whether that was false,  
9 you will have to go to the testimony of all the  
10 agents who conducted surveillance of 1564 Benson  
11 Avenue on April 11 and you determine whether the  
12 Government established beyond a reasonable doubt  
13 that he was in that apartment on the first floor  
14 for more than one hour. If you find that the  
15 Government did, then it will establish the  
16 second element.

17 The third element is that at the time the  
18 defendant made the statement under oath he knew  
19 it was false. You will recall the statute  
20 refers to one who knowingly makes any false  
21 material declaration. So, criminal intent is the  
22 important element. The Government must in effect,  
23 prove beyond a reasonable doubt that when he made  
24 that statement he believed it to be false; that  
25 he was aware that he was giving a false answer;  
that it was not through some misunderstanding,



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1  
2 fatigue, inadvertence of any other fact that  
3 would bear on his making it knowingly and  
4 voluntarily, being aware of what he was saying  
5 and believing at that time that what he was  
6 saying was false.

7 The Government must prove all those  
8 essential elements of the crime by proof beyond  
9 a reasonable doubt. If the Government fails in  
10 any respect to establish any one of the three  
11 elements, you must find the defendant not  
12 guilty. On the other hand, if the Government  
13 has established all the elements, the three  
14 elements that I have just defined, beyond a  
15 reasonable doubt, then you must find the defendant  
16 guilty.

17 During your deliberations you may have  
18 occasion to ask the Court for testimony or  
19 exhibits. Just write a note, through your Foreman,  
20 Mr. Stanton. It will be given to the marshal and  
21 I will get it.

22 Now, these minutes have not been transcribed  
23 so it means that our reporter, Miss Ginsberg, will  
24 have to search for the testimony you request and  
25 it may take a little time.

STATE OF NEW YORK, COUNTY OF **KINGS**

ss.:

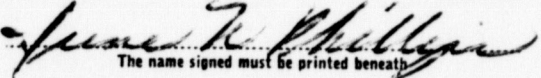
**IRENE N. PHILLIPS** being duly sworn, deposes and says: deponent is not a party to the action,  
is over 18 years of age and resides at **Brooklyn, New York**

☐ Affidavit of Service By Mail On **August 8** 19 **74** deponent served the within **BRIEF ON BEHALF OF APPELLANT**  
upon **David G. Trager, United States Attorney, Eastern District of**  
attorney(s) for **Brooklyn, New York** in this action, at **New York, 225 Cadman Plaza East,**  
the address designated by said attorney(s) for that purpose  
by depositing a true copy of same enclosed in a post-paid properly addressed wrapper, in — a post office — official  
depository under the exclusive care and custody of the United States Postal Service within the State of New York.

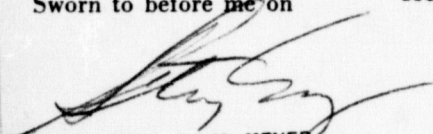
☐ Affidavit of Personal Service On **19** at **upon**  
deponent served the within

herein, by delivering a true copy thereof to **h** personally. Deponent knew the  
person so served to be the person mentioned and described in said papers as the **therein.**

Sworn to before me on **August 8** 19 **74**

  
The name signed must be printed beneath

**IRENE N. PHILLIPS**

  
**STANLEY M. MEYER**  
**NOTARY PUBLIC, State of New York**  
**No. 30-2684055**  
**Qualified in Nassau County**  
**Commission Expires March 30, 1975**



